

REMARKS

Claims 1-20 are pending in the present application. Claim 1 has been amended herein to correct minor typographical errors. No new matter has been added.

Claims 1, 4-12, and 15-20 have been rejected under 35 U.S.C. § 103(a) as assertedly being unpatentable over U.S. Patent No. 6,335,279 to Jung et al. (hereinafter "Jung") taken with U.S. Patent No. 5,847,428 to Fulford et al. and U.S. Patent No. 6,004,851 to Peng (hereinafter "Peng"). Claims 2-3 and 13-14 have been rejected under 35 U.S.C. § 103(a) as assertedly being unpatentable over Jung, Peng, and Fulford, as applied to claims 1, 4-12, and 15-20 above.

Applicants respectfully traverse these rejections.

Regarding Applicants' claim 1, the MPEP states: "Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art." (MPEP § 2143.01.) (Citations omitted.) "[I]mpermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art." (MPEP § 2142.) "Furthermore, a prior art reference must be considered in its entirety, i.e., as a whole, *including portions that would lead away from the claimed invention.*" (MPEP § 2141.02.) (Underlining in original, italics added.)

In this case, not only is there no suggestion or motivation to combine the references as suggested by the Office Action, but Jung explicitly teaches away from the combination asserted by the Office Action. In particular, Jung explicitly teaches that a third ion implant *is not performed* after removing the sacrificial spacer. In contrast, Jung assertedly discloses that a second ion implant is performed and then the sacrificial spacers 132 are removed *without*

performing a third ion implant. Jung discloses that the sacrificial spacers are removed to provide a region where a contact hole is to be formed. Thus, Jung explicitly teaches that the impurity regions 134a and 134b are to be formed away from the first spacers 124, and accordingly, Jung cannot be said to teach or suggest the unique combination recited in Applicants' claim 1.

In fact, Jung adds significant process steps to ensure that the impurity regions 134a and 134b are positioned away from the first spacers 124. Jung discloses the additional steps of forming the sacrificial spacers 132, performing the ion implantation, and then removing the sacrificial spacers 132 for the sole purpose of positioning the impurity regions away from the first spacers 124. Assertedly, this was the point of the invention disclosed in Jung – positioning the impurity regions 134a and 134b away from the first spacers 124 while allowing space to form a contact hole. (See Jung, Abstract.) *If positioning the impurity regions 134a and 134b away from the first spacers was not necessary to Jung, then presumably Jung would have simply performed the second ion implant using only the first spacers 124 as a mask and would have never spent the valuable time and resources forming and then removing the sacrificial spacers.*

Thus, because Jung explicitly teaches away from the Applicants' invention as recited in Applicants' claim 1, it cannot be said that it would be obvious to combine those references in the manner attempted by the Office Action. Clearly, the only suggestion to combine the cited references in the manner proposed by the Office Action is Applicants' own disclosure, which is using impermissible hindsight and must be avoided. (MPEP § 2142.) As a result, Applicants respectfully request that the rejections of claim 1 be withdrawn.

Applicants' claim 12 includes similar limitations as those discussed above with reference to claim 1, and accordingly, Applicants respectfully request that the rejections of claim 12 also be withdrawn.

Claims 2-11 and 14-20 depend from claims 1 and 12, respectively, and add further limitations. It is respectfully submitted that these dependent claims are allowable by reason of depending from an allowable claim as well as for adding new limitations.

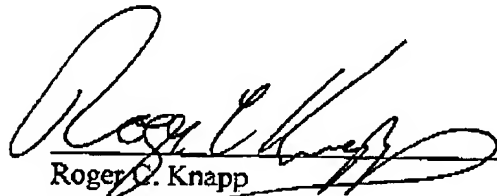
In view of the above, Applicants respectfully submit that the application is in condition for allowance and request that the Examiner pass the case to issuance. If the Examiner should have any questions, Applicants request that the Examiner contact Applicants' attorney at the address below. No fee is believed due in connection with this filing. However, in the event that there are any fees due, please charge the same, or credit any overpayment, to Deposit Account No. 50-1065.

Respectfully submitted,

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Date

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